

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR07-952

ELBERT JONES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** September 17, 2008

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
[NO. CR 06-4771]

HONORABLE WILLARD  
PROCTOR, JR., JUDGE

AFFIRMED

---

**LARRY D. VAUGHT, Judge**

Appellant Elbert Jones was convicted in a bench trial of felony possession of a controlled substance. On appeal, he argues that there was insufficient evidence to support his conviction because the State failed to prove constructive possession. He also claims that the trial court erred by allowing uncorroborated accomplice testimony. We affirm.

On October 22, 2006, an officer from the Sherwood Police Department engaged in a routine traffic stop of a vehicle in which Jones was a front-seat passenger. In the course of the stop, the officer discovered .1178 grams of a substance later determined to be cocaine. On the roadway beside the vehicle, the officer also found a plastic baggie containing a substance that tests revealed to be marijuana. In light of these discoveries, the officer arrested Jones and two other people who were traveling in the vehicle.

The driver of the vehicle, Cedric Dobbins, pled guilty to possession of marijuana in a separate proceeding. Jones's co-defendant, Demarcus Tidwell, was a back-seat passenger at the time of the stop. A verdict of not guilty was directed in Tidwell's favor. Jones made all the proper objections and renewals, but his motions were denied. He was found to be guilty and sentenced to three years' probation. It is from this conviction that Jones now appeals.

On appeal, Jones argues that the trial court erred when it denied his motions for directed verdict. Because this was a bench trial his motion for directed verdict was in reality a motion to dismiss. *Stewart v. State*, 362 Ark. 400, 208 S.W.3d 768 (2005). A motion to dismiss at a bench trial and a motion for a directed verdict at a jury trial are challenges to the sufficiency of the evidence. Ark. R. Crim. P. 33.1. In determining whether the evidence is sufficient, we view the evidence in the light most favorable to the State; thus, only the evidence that supports the conviction is considered, and the conviction will be affirmed if it is supported by substantial evidence. *Stone v. State*, 348 Ark. 661, 667, 74 S.W.3d 591, 594 (2002). Substantial evidence is evidence that will compel a conclusion without conjecture. *Haynes v. State*, 346 Ark. 388, 394, 58 S.W.3d 336, 341 (2001). Further, when the sufficiency of the evidence is challenged, we will not weigh witness credibility. *Baughman v. State*, 353 Ark. 1, 4, 110 S.W.3d 740, 742 (2003). And of specific import in this case, a trial court is not required to give an appellant's testimony greater weight than that of a police officer. *Johnson v. State*, 6 Ark. App. 342, 345, 642 S.W.2d 324, 326 (1982).

Under Arkansas Code Annotated section 5-64-401 (Repl. 2006), it is unlawful for any person to possess a controlled substance. Possession need not be actual possession, but may be

constructive if a person controls a substance or has the right to control it. *Osborne v. State*, 278 Ark. 45, 50, 643 S.W.2d 251, 253 (1982). When illegal substances are located in a jointly occupied residence or vehicle, the State must either provide the necessary link to a specific occupant or prove that the occupant was in sole possession. *Id.* However, proof must be presented that an occupant exercised care, control, and management over the substance, and knew that the substance was illegal. *Id.*

Factors that reasonably establish constructive possession are as follows: 1) whether the contraband was in plain view; 2) whether the contraband was found on the person or with his personal effects; 3) whether it was found on the same side of a car seat where the accused was sitting, or close by; 4) whether the accused owned the vehicle or exercised control over it; 5) whether the accused acted suspiciously before or during the arrest. *Jones v. State*, 357 Ark. 545, 551, 182 S.W.3d 458, 488 (2004).

Jones argues that the State's evidence was too weak to create a reasonable inference of constructive possession. However, the record—when viewed in the light most favorable to the State—establishes constructive possession. Jones was arrested (along with two other passengers) after a traffic stop led to the discovery of cocaine base on the vehicle's passenger-side floor board. Jones was sitting in the passenger seat. The arresting officer testified that the cocaine was in plain sight and that Jones was nervous while he was being questioned. Finally, one of Jones's fellow passengers testified at trial that Jones admitted to actual possession.

There is ample evidence, creating links between Jones and the contraband, to establish constructive possession. The cocaine base was in Jones's reach, and as such was within his

control. The officer's testimony placed the contraband in plain sight, lying on the floor by Jones's feet. This alone established that Jones knew the contraband was in the car. Further, Jones's nervousness (as observed by the officer) established Jones's awareness of the illegality of the substance at his feet. Although Jones insists that the contraband was not in plain sight, the arresting officer testified otherwise and, as we have previously noted, the trial court was not required to disregard the officer's testimony and accept only Jones's version of events. As such, the State produced substantial evidence of constructive possession. *Dodson v. State*, 341 Ark. 41, 47, 14 S.W.3d 489, 493 (2000).

Jones also argues that the trial court erred in its reliance on the testimony of one of his fellow passengers, who stated that Jones made a jailhouse confession in which he admitted to actual possession. Jones asserts on appeal that because the testimony of his "accomplice" was uncorroborated it should have been disregarded. Our law requires that corroborating evidence be sufficient to establish that an offense—connected to the accused—has been committed. *Gardner v. State*, 364 Ark. 506, 512, 221 S.W.3d 339, 343 (2006). It must be evidence that independently supports a connection, even if an accomplice's testimony is eliminated. *Id.* Finally, where circumstantial evidence corroborates accomplice testimony, "all facets of the corroborating evidence can be considered to constitute a chain sufficient to present a question for the resolution by a [fact-finder] as to the adequacy of the corroboration, and the court will not look to see whether every other reasonable hypothesis but that of guilt has been excluded." *Johnson v. State*, 303 Ark. 12, 17, 792 S.W.2d 863, 865 (1990) (citing *Rhodes v. State*, 276 Ark. 203, 634 S.W.2d 107 (1982)).

Here, the alleged accomplice testimony of actual possession is corroborated by the same evidence that established constructive possession: the location of the contraband and Jones's demeanor at the time of the traffic stop. In sum, because the State established that Jones both constructively and actually possessed a controlled substance, substantial evidence supports his conviction.

Affirmed.

GLOVER and BAKER, JJ., agree.